

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04 11539 JLT

WALTER STICKLE, ANTHONY)
CALIENDO, JOHN PITINGOLO, and)
DANIEL FISHER,)
Plaintiffs)
v.)
ARTHUR ORFANOS,)
Defendant)

)

AFFIDAVIT OF ARTHUR ORFANOS

I, Arthur Orfanos, do hereby depose and state under oath,

1. I am the defendant in the above action and I am familiar with the facts that

I am about to relate

2. I am 41 years old and I have been a musician my entire adult life.

3. I created "The Mood" in 1982 with Richard Pontes, this included the concept of a performing Pink Floyd tribute. After Mr. Pontes' death in 1996, I regrouped and continued my efforts to achieve this

4. I sent Tony Caliendo a promo package of my original "The Mood" CD which included press clippings that described The Mood as sounding to that of Pink Floyd and my vocals to that of David Gilmour. A lot of people told me that I resemble and remind them of David Gilmour, this is what sparked my interest in doing the Pink Floyd tribute band at this level.

5. One of the reasons Tony had an interest to meet me, and discuss my project, was that had been friends with the late Richard Pontes' sister. I went with Bob

Britain to ACAL Copiers to meet Tony Caliendo in March or April of 1998, not 1999 or 2000 as he swore to under oath. At this meeting I disclosed specific details of my intellectual concept to [him].

6. My Intellectual concept in which I discussed with Tony included: performing at and in the public and private school systems, movie theaters, theaters, Las Vegas, carnivals and/or amusement parks, charitable, memorial and educational events, performing the Pink Floyd tribute act with only 4 musicians, and eventually hire additional musicians i.e.; female backup singer(s), a saxophone players (when needed) to replicate the "sights and sounds" of Pink Floyd themselves, and that this achieve the level of what "Beatle mania" was to The Beatles.

7. Also incorporating my original music with the Pink Floyd Music, approaching the market place of existing Pink Floyd tribute bands, Laser lights, multi color light show, visual effects in the form of video screen as Pink Floyd displays, placing portions of the white "brick wall" on stage replicating Pink Floyd's wall album/tour, characters from Pink Floyd concepts and themes. I was as specific that part of my idea was to use a lap steel (slide guitar) for songs like "High Hopes", "One Of These Days" and "The Great Gig In The Sky" and to use the "Talkbox" on the songs "Pigs" (3 different ones) and "Keep Talking."

8. The things that make this specific is, at the time, no other tribute band was doing this, I'm not sure if any other Pink Floyd tribute currently does this, no other musician at that time, or currently, resembles or sounds like David Gilmour as I do. By putting this concept into place, my goals were to achieve the best Pink Floyd tribute show ALA "David Gilmour." I discussed things with him regarding the visual effects as well as

the audio specifications that it would require doing a Pink Floyd tribute band.

9. During that meeting Tony showed us a room in his building that was being used as storage and expressed that he would be happy to clean it and have the band move its rehearsal room at that location. He assured me that he was anxious to join me and highly interested with investing money into my project and my intellectual property. Tony liked and agreed to my concept and joined "The Mood." He was enthusiastic to get started, he moved his drums into the rehearsal room that I was already renting in Woburn, MA.

10. Shortly thereafter, Bob Britain was replaced with Mark Maser, Memorial Day weekend of 1998, per Mr. Caliendo's recommendation. by July 1998 Ray Crandall joined the band, we continued rehearsing and to prepare ourselves to move into the ACAL Copiers building.

11. Mr. Caliendo refused to take any sort of payments for electricity or heat etc. I offered to him many times to pay for these expenses, he never accepted or asked. He invested a great deal of monies into the band. Since I couldn't afford to match that amount of money, I included him on my trademark of "The Mood", the only reason I did this was to show him that I was serious about this project, and to somehow prove my dedication and security to him that I would not do anything that would cause him to suffer a loss of any kind.

12. Mr. Caliendo is lying when he said that he didn't know that, he knows because he signed the trademark application and when he and John Pitingolo threw me out of the band, I asked him to sign something so that I could rightfully remove his name

from "The Mood" trademark, he refused and threatened to have me sign a statement that I would proclaim and agree that I had no involvement with the creation of the band, specifically a "Pink Floyd" tribute, "Pink Voyd" or that I would attempt to start one or attempt to claim any involvement with this project.

13. The plaintiffs are still operating my Intellectual Property and have contradicted themselves repeatedly. "Pink Voyd" is the same exact thing, "The Mood", the same name that they insisted and argued with me that I change it to "Pink Voyd", they've sworn to this and presented this to the court as well. They have even advertised me with "Pink Voyd" and associate "The Mood" with "Pink Voyd."

14. I intended to trademark the name "Pink Voyd" to protect the IP that was stolen from me by the plaintiffs, I suffer severely from sleep apnea and along with the distress and devastation that the plaintiffs caused me, it took some time to gather myself and complete the necessary steps to do this. My health was my first priority.

15. I submit evidence, the application to trademark my IP "Pink Voyd" to be filed on September 12, 2002, when I began recording and collaborating again with the late Ray Crandall (Defendant's Exhibit 7). At that time I also registered the domain pinkvoyd.us, September 9, 2002, (Defendant's exhibit 8) to continue commerce with my IP, however, Ray Crandall died October, 2003. I filed the application online but failed to submit the necessary fee.

16. When I realized of the error that I had made, I verified with the UNITED STATES PATENT AND TRADEMARK OFFICE that this was not complete, therefore, I resubmitted the proper application and fee, to protect and trademark my IP. I submit evidence, the record for PINK VOYD from the UNITED STATES PATENT AND

TRADEMARK OFFICE for my IP (Defendant's exhibit 9).

17. Also I submit evidence, MPEGs of myself performing live with the plaintiffs. These video clips were advertised as "Pink Voyd" on Pinkvoyd.com. I have also included a printout of the "downloads" page that it was advertised on, "The Mood" and "Pink Floyd Experience" are listed in the META TAG, enclosed as evidence, is a printout of the META TAG (Defendant's exhibit 9, Attachment A). The Plaintiffs make every attempt to associate "Pink Voyd" and "The Mood" since then but yet lie and testify that "Pink Voyd" did not develop until mid 2001, they also present this fraudulent accusations against me to the honorable court.

18. Mr. Caliendo has provided misleading testimony (Plaintiff's exhibit A, paragraph 22) "In May of 2004, Mr. Orfanos sent the band members of Pink Voyd a letter

informing that he had registered the trademark Pink Voyd and seeking to have us pay him an out of court settlement for the rights to the mark". This is a false statement.

19. The letter I wrote unmistakably states that I am prepared to pursue legal action against them for Intellectual Property violation, not money for rights to the trademark. I informed them they are in use of my IP ("The Mood/Pink Voyd") unauthorized. I requested they cease and desist and offered an opportunity to settle these matters amongst ourselves, not waste the time of the courts, or enter the courtroom. They chose to ignore my requests. It appears they did not read correctly and have misconstrued the facts of my letter (Defendant's exhibit 10). They have also presented these false statements against me to the honorable court.

20. June 17 2004 Tony Caliendo called my brother Steven and expressed

they hired a lawyer to pursue legal action against me. Tony also threatened to contact my parents and other family members. I don't know why he would do something like that. I invited the Plaintiffs to contact me directly to discuss our unsettled business. Mr. Caliendo instead offered to meet with my brother to discuss details of their legal pursuit against me. The plaintiffs purposely avoided me but contact members of my family instead, to threaten legal action and other. They have also done so specifically against the requests made to them in the demand letter that my attorney issued. The plaintiffs behavior has caused great upset to my family.

21. The Plaintiff's have provided, under oath, false statements, that I am not affiliated with "Pink Voyd." They have perjured themselves and/or have mislead or persuaded others into doing the same. The Plaintiff's have instigated litigation against me under false pretense in attempt to avoid the matter of IP. My evidence shows, "The Mood" and "Pink Voyd" are one in the same.

22. The META TAG on the entry page of the Pinkvoyd.com website reads "Copyright 2000-2003" (Defendant's exhibit 11) This evidence supports my testimony, the Plaintiffs acknowledge and have falsified their sworn statements that "Pink Voyd" did not develop until 2001. The META TAG of the main page of the Pinkvoyd.com reads "Copyright 2001-2003" (Defendant's exhibit 11 Attachment A).

23. "The Mood" was listed in the META TAG of PinkVoyd.com. Plaintiffs attempt to maintain and establish association and identity of "The Mood" with "Pink Voyd" (Defendant's exhibit 12). On June 22, 2004, Plaintiffs received the demand letter from my attorney which stated this information and brought to their attention that we were aware of this fact. On June 23 or 24 2004, "The Mood" was removed and the

META TAG was completely changed (Defendant's exhibit 12 Attachment A).

24. The plaintiffs testify calling "The Mood" artwork/posters, "Pink Voyd." (Plaintiff's Exhibit C paragraph 11), " I know that he is using some of these "Pink Voyd" posters on his website www.pinkvoyd.net". I submit evidence (Defendant's exhibit 13).

25. Plaintiffs former employee, John Teele wrote to me on May 14, 2004, Mr. Fisher confirmed to [him] "Pink Voyd" was "The Mood" (Defendant's exhibit 14).

26. I received and email from Tony Caliendo (Defendant's exhibit 15) "as much as the past was uncomfortable for me and for you and many others, I thought it would be only right that we forget and forgive." Mr. Caliendo admits to the unpleasantness, in this email he refers to the facts of what really transpired, the vile treatment and judgment they inflicted upon me and my forced eviction from "The Mood/Pink Voyd." The plaintiffs testify under oath, that they followed Stickle in quitting the band one by one.

27. The Plaintiffs retaliate in a most disturbing way, as an attempt to discourage me from pursuing legal action. The guestbook entries of my Pinkvoyd.net website (Defendant's exhibit 16) signed "Mike Hunt" are of an extreme nature, the plaintiffs accuse me of murdering Mr. Pontes and claim to have knowledge of the facts regarding Mr. Pontes' death.

28. The Plaintiffs chose these atrocious tactics to pervert the issue at hand and maliciously attempt to inflict distress and discourage and cause harm to me with statements; "you're gonna need all the support you can get" "you fucking MURDERER", "Good Luck w/your music career you fucking CHEESE salesman. and "Sleep well". I find it strange as not many people in the world that have access to the internet, know

the details of my job, or that I suffer with a sleep disorder.

29. The guestbook entry Wednesday, 26. May 2004 11:54 PM on Pinkvoyd.net "Mike Hunt", "Did Richard Pontes decide not to play with you also? I guess you showed him you sorry fucking head case. How's your mojo" "Anonymous Paul"? Ciao!" The plaintiff's admit to betraying me (Defendant's Exhibit 16). I submit evidence which positively identifies "Mike Hunt" to be the Plaintiff's (Defendant's exhibit 17), Through an email trace. The email address "eatmyshitarty@yahoo.com", used by the plaintiffs to post these messages, come from the same email account "skeevedout@yahoo.com", plaintiff John Pitingolo's. They defile the memory and good name of Mr. Richard Pontes, myself, our family and friends. Shame on them.

30. Other guestbook entries are believed to be that of the plaintiffs as well, however, the email trace conducted to establish the positive identity of those were not as successful, those responsible were smart enough not to use their real email account to post these incredulous and atrocious statements. The Plaintiff's have posted libelous remarks about me on a public message board at the Relicsmusic.com website, on November 3, 2002 (Defendant's exhibit 18).

31. Photos of the laser light show advertised on the Pinkvoyd.com site are the same exact light show and photos used by "The Mood." (Defendant's exhibit 19). These photos were taken by myself and the late Ray Crandall. These exact photos and slide show demonstrations were taken from "The Mood" web site and are advertised on the Pinkvoyd.com site. The META TAG of the animated light show has "The Mood" listed in it. I submit as evidence, a printout of the source code for the slide show. This was created by Kris Kipp (Ray Crandall's widow) (Defendants exhibit 19 Attachment A).

32. I hired John Pitingolo into "The Mood" between June 28, July 4, 2000. based on my personal acceptance and choosing, I disclosed to him in detail the goals and details of my intellectual concepts of the Pink Floyd Tribute band, and what my future plans were for the progress and success of "The Mood". It was made clear to Pitingolo that his duties and responsibilities were solely Bassist and perhaps, some vocal work.

33. One of the requests made to me by my Mr. Pitingolo was that he be paid in cash as to escape the responsibilities of paying income taxes, I was reluctant in doing so, however, I felt sympathetic towards his personal financial situation and family responsibility to paying child support. Out of compassion for Mr. Pitingolo's child and personal financial affairs I paid him in cash for his services in the band.

34. I knew John Pitingolo from Arlington growing up and had approached him in 1998 to join up with this project, at that time he declined my offer to join. John Pitingolo's first performance with "The Mood" was July 29, 2000, at the Paradise Beach Club, in Weirs Beach NH. The statements the plaintiffs present that [he] joined in 2001, are lies.

35. My duties and roles in the band aside from being the creator, founder and proprietor, were: Guitarist, lead vocalist/front man, management, music director, and agent/artist/promoter liaison. It was also agreed between Tony Caliendo, the late Ray Crandall and I, that I would receive an additional 10 percent fee as management fees for my time, and compensation for my IP, any and all website maintenance and activities and personal expenses incurred.

36. Often when attending to or deciding on typical business activities, as in example upon replacing Mark Maser on June 26, 2000 with a new bass player John

Pitingolo, booking shows, or renting equipment etc., I was told by Tony, "This is your band," "This is your project."

37. After "The Mood's" September 22, 2000, at the Plantation Club, Worcester, MA, (Defendant's exhibit 20) the late Ray Crandall gave notice that he was leaving the band. From answering the ad that I had placed in the Boston Phoenix, Dan Fisher was hired into "The Mood" in late 2000.

38. When Mr. Fisher joined "The Mood" he told us how he stole sound files and sound effects from Pink Floyd in 1994 at Foxboro Stadium. At that time he was working for Kurzweil (Defendant's exhibit 21). He played for us in length, different sound effects and sound files that he stole and bragged to us the story of how he accomplished this. [He] also told us Mr. Stickle had accompanied him to at least of his visits to Foxboro Stadium. [He] told us details of how he had contact with Jon Carrin, a musician in THE "Pink Floyd". I remember when I questioned him about this, he played for us the full version that Stephen Hawking recorded for David Gilmour for a song "Keep Talking" that appeared on Pink Floyd's "Division Bell" CD in 1994.

39. I had read about this story in a music magazine, that David Gilmour had asked Professor Hawking to record a monologue for the project. Though a very short sample of this appeared on the final cut of "Keep Talking", Mr. Fisher had a full monologue, something that could not have been replicated, or created by him, this is how I knew his story was true. upon hearing and witnessing the sound effects and original copy written and protected "works" and intellectual property stolen from Pink Floyd, and hearing in detail the process and properties and material in which he had stored on his computer and musical equipment.

40. I was concerned with this and when asked, Mr. Fisher assured us that they would not be used at any time. I made my concerns known many times, Tony's typical response was, "don't upset the apple cart."

41. I suspected that with Mr. Fishers' knowledge and expertise and being a Professor of music, (currently at Berkley school of Music) music synthesis etc. that he has quite capable of the technicalities that would be involved in accomplishing such a task. Also that being in his professional position, an employee with Kurzweil, that having clearance and/or access to this type of intellectual property, and as a professor as well that this was not something that he would not lie about doing, as it could cause harm to his personal and/or professional livelihood and/or reputation for even suggestion such activities even in a false or misleading manner. (Recently, I have spoken with a department head at Kurzweil in Washington State, who also happens to be a friend of Jon Carrin, they appear concerned about the activities of Mr. Fisher.

42. Shortly thereafter, Mr. Fisher told us about his friend Walter Stickle and wanted him to join the band. He said Walter was wealthy and gave him \$300,000.00 to buy a house he told us that, if Walter was to join the band, that he would invest money into the band and it was the type of project that they both would like to be involved in. When I first heard these things, I was unsure about the problems that could arise.

43. Mr. Stickle was introduced to us by Mr. Fisher. We met at the Irish American Club located on Middlesex Turnpike, Billerica Ma, (across from the ACAL Copiers building) for a meeting in a social environment. Present at this meeting were: Eamon Tighe, Anthony Caliendo, John Pitingolo, Dan Fisher, and myself. At this meeting Walter voiced his desire to join "The Mood". As founder and creator of "The

Mood", my decision was not finalized in agreeing that Mr. Stickle join the intellectual concept.

44. I was not interested in Mr. Stickle joining "The Mood" as a full time member, as he explained his desire to join, he also expressed that he was comfortable financially with investing monies and equipment into the band. My answer, regardless of his financial situation was no. Tony was very impressed to hear of Mr. Stickles wealth and convinced me that he be allowed in the band. I had no problem meeting Mr. Stickle but was weary of having him join "The Mood."

45. I made my thoughts clear to them, about this time Mr. Caliendo started arguing with me that Walter should join "The Mood." He told me, "a guy like that with money is what you need in your project." "He will invest this (making money gesture with his figures) for more lights, video screens and other equipment." The more I was pushed into this, the more I was afraid they would try to steal my band.

46. I was clear that I did not want a fifth member especially a second guitarist. Subsequently, Mr. Stickle was told that he was hired into the band as a full time member. I was reluctant in having Mr. Stickle join for a few reasons and one of the main reasons was that if his friend, Mr. Fisher had already stolen IP from Pink Floyd, what would stop [he] or both of them to steal IP from me as well. I was also worried that this could create discordance throughout the band.

47. This worried me tremendously. I mentioned this to Tony, his response to me was to not worry and that I was wasting time or worry about things like that, nor should I be concerned or waste my time with things like "copyrights and trademarks." Just to focus on practicing. When I brought to his attention (and the band's) that I

contacted Pink Floyd's offices in London (EMKA Productions) to obtain some kind of permission from Pink Floyd and/or David Gilmour, [He] became irritable with me, as did the rest of the band members, that I had contacted and spoke with Sue Turner (personal assistant to David Gilmour).

48. These concerns are what prompted arguments between, Tony, John, Dan, Walter, against myself. Eamon Tighe and Eric Kenney were present the majority of the these discussions, concerns, arguments. Many times, Eric tried to stop the cruel treatments against me, Eamon could have but never did and always remained quiet.

49. I arrived at band rehearsal one evening, Walter had spent in excess of a few thousand dollars on musical equipment. Tony said to me privately, "See how dedicated he is" "he went out and bought the necessary equipment." I replied that that was not dedication, that was wealth. Just because he was in the position to spend so quickly did not mean that he was dedicated. He currently is using same exact specific methods and equipments as I established and disclosed to the Plaintiffs for my IP. (Defendant's exhibit 22). The plaintiffs suggest mockingly "Just add Walter".

50. It was suggested to me, the name "The Mood" be changed to something that sounded more like "Pink Floyd". The names "Pink Floyd Experience", "Pink Voyd" and others were discussed for usage for the band. Tony distinctly came to me with the name "Pink Floyd Experience" because he wanted to make a strong impression to our audience and others that we were not a typical "tribute band" he wanted to impress and show off that the band was a big show.

51. We did discuss changing the name of the band to something that would sound more like "Pink Floyd." I raised concerns the logo submitted to me for my

approval for "Pink Voyd" (Defendant's exhibit 23) was trademark infringement against Playboy (Defendant's exhibit 23 Attachment A). I mentioned to them many times about trademark and/or copyright infringement against others. Though I was part of the discussions, I did not see any logical reasons to change the band's name at that time, looking back, I realize that this was their way of announcing to me that they were planning something underhanded against me.

52. The Plaintiffs have committed IP violation, trademark and/or copyright infringement against others; Pink Floyd (Sony Music) (Defendant's exhibit 24) 20th Century Fox (Defendant's exhibit 24, Attachment A) Ragdoll Ltd (Teletubbies) (Defendant's exhibit 24, Attachment B), Led Zeppelin (Atlantic Records) (Defendant's exhibit 24, Attachment C), The Beatles (EMI/Capitol Records) (Defendant's exhibit 24, Attachment D), Warner Bros (Defendant's exhibit 24, Attachment E), Syd Barrett (Defendant's exhibit 24, Attachment F) Playboy (Defendant's exhibit 24, Attachment G).

53. I have communicated with more than one of these parties. I was informed the plaintiffs' conduct are in violation without the necessary licensing. This was something I was always concerned about from the beginning. I don't believe the plaintiffs obtained the proper licensing or expressed written permission. I have received since, an email from Ragdoll Ltd, confirming that their copy written works are being used unlicensed (Defendant's exhibit 24, Attachment B). Currently the aforementioned parties are in communication with me in regard to pursuing trademark and/or copyright infringement against the plaintiffs. They commit this against the aforementioned parties, they easily have done it to me.

54. As the owner/operator of "The Mood", I was/am aware of the necessary

steps to conduct legal and ethical business for the performing arts, I obtained the proper mechanical license for use of Pink Floyd's music (Defendant's exhibit 25). I made these procedures known to the Plaintiffs many times. Raising concerns of Mr. Fisher's illegal acquisitions from Pink Floyd or Mr. Stickle be hired as a full time member of my band, that I was opposed to changing the name of "The Mood" they began treating me cruelly.

55. On one occasion in early 2001, Mr. Stickle arrived at my home to work on music. Walter told me that the band was talking about throwing me out of the band. He told that he thought I should know. He told me to be careful.

56. After repeating concerns that I did not wish to change the name of "The Mood" cruel treatment by the Plaintiffs continued, I was humiliated many times. They made it increasingly difficult for me to conduct operations of the band. Eric Kenney and Eamon Tighe witnessed these instances.

57. In March or April of 2001, I registered the domain names; Pinkvoyd.com, PinkFloydExperience.com, and Themood1.com. In an attempt to cease the bad conditions, I reluctantly agreed to change the name of "The Mood." When I told the band I registered the domain names, tempers and cruel treatment toward me escalated, I was soon told by the plaintiff's to transfer registration to John and Walter (the plaintiffs also provide evidence to confirm this) as to alleviate any more burdens from me and to let John and Walter control the artistic aspects and maintenance of our website, and that I would only have to focus on booking and running the band. I did this May 23, 2001, (Defendant's exhibit 26). They lied to me, once I completed this transaction, they felt more comfortable with the progress of their agenda.

58. In 2001, I was diagnosed with sleep apnea, I informed the band and requested a meeting, I explained to them that I had to make this appointment and possibly,

I would need to sleep with a CPAP machine, I requested the band took the proper time off so that I could proceed with my appointment and get adjusted to the CPAP machine, I was ignored. I was treated with silence and when I appealed to them they said that they couldn't help me. This is when Dan Fisher explained he also suffered from sleep apnea and explained to us the surgical procedure he underwent to treat his condition.

59. About this time Mr. Pitingolo told us his brother had mentioned how cruel sleep deprivation could be and the military used these methods as a form of torture etc. He also acknowledged that he knew how serious sleep deprivation was to someone. These facts lead me to believe that the Plaintiff's were well aware how to inflict distress upon me to aggravate my condition.

60. The plaintiffs claim that I was argumentative. Many of these arguments started due to the embarrassment that Tony and John caused to me, about my weight, smoking cigarettes, why I was eating something, they asked if I worked a full time job etc. Many of the other things that caused arguments was that Tony would tell me to refuse offers for work.

61. I would negotiate bookings for the band only to be told, usually by Tony, that we didn't want to accept them (because they weren't offering enough money) Eventually, he made me refuse offers that the band was getting, June 2001: Booking via a private promoter Pittsburgh, PA, \$10,000.00 (2 shows) and a Booking via Flash group concerts July 2001 in Rochester, NY, \$4,600.00 (one Show). I tried to inform to the

other band members about these offers but I was told that they were aware of the offers and had no interest in hearing of them.

62. We were offered via Patricia Byrnes (Manager of Draw the Line Aerosmith tribute band) an opportunity for a show May 27, 2001, in Manchester, NH for the fee of \$2,500.00 and the opportunity to play with other known acts in front of a potential crowd of 20,000 fans with full radio support. Tony told me to ask for \$6,000.00. He said that a company like that has money to spend and that I should tell them that we can't do the show for under \$6,000.00. I feel that by doing this he deliberately tried to ruin my reputation.

63. I spoke with Patricia Byrnes on a few occasions regarding my band in different aspects. She mentioned to me that she could and had interest in introducing me to the Hard Rock Cafe and the possibility of the future with the HRC. We made an appointment for her to come see the band live on April 12, 2001, at our rehearsal room in Billerica. She never made the appointment, I tried to reschedule with her but I was told by Tony to cut ties with her, "call her a c**t" "write her a letter" "tell her we'll never do business with her" and that we don't need her or to perform at the HRC.

64. Jarrod's Place Attleboro, MA, I had some difficulty at first establishing a rapport with Jarrod Illkowitz. He was reluctant in the beginning stages to hire us, he was uncomfortable that The Mood was unknown, but was willing to offer us an opportunity to establish ourselves in his club. He made an offer to me to hire the band on a trial basis, I asked him to speak to our agent. Mark Gentilela, Flashgroup Concerts for negotiated an August 4, date, for the fee of \$1500.00.

65. When I approached the band to confirm this date (my common practice)

I was told by Tony, we can't accept that, it's not enough money and that after the difficulties dealing with Jarrod Illkowitz, I was told by Tony (who was aware of the difficulties trying to establish a relationship with Jarrod) to call Jarrod and tell him "to go f*ck himself", "write him a letter telling him we'll never do business with him," "we'll never play at Jarrod's." Unfortunately the date was canceled, to my knowledge, I never told Mr. Illkowitz these things, but I find it appalling that they established a relationship with Jarrod's Place after I was ousted from my project (for one reason booking shows at venues such as Jarrod's Place).

66. After much mental, emotional and verbal abuse, on June 1, 2001, approximately 11 p.m. I arrived at my home from a band rehearsal, I was with Eric. I was very uncomfortable of how I was being treated and I had bad feelings, I also was extremely uncomfortable about the performance the next night at Goodtimes in Somerville, the following day. I called Tony at his building as soon as I got home and discussed with him that I thought we should postpone the show and have a band meeting, after speaking with him in great detail, he persuaded me to sleep on it.

67. One of the reasons I felt this way was the plaintiffs insisted on performing song(s) that I felt I was not ready or the band was not ready to perform, to be exact, "Dogs" a 17 minute Pink Floyd epic. This was a very involved guitar song and vocal song for me. When I said that I felt the band was not ready to perform it live, I was told that "everyone else" has no problem with it and I was told that I would be responsible if I did not perform this particular song perfectly.

68. I can fairly say, that the plaintiffs purposely put me in a predicament to fail in front of an audience, and also, knowing of my physical medical condition, to put

me intentionally in harms way as to either force me to quit or to show in a public forum that I could not function, physically or artistically. They knew from my past experiences, what could have happened to me.

69. When I woke up the next morning, I decided to cancel the performance, I received a call from Tony Caliendo with Eamon Tighe and John Pitingolo on conference call, they assured me that there were no problems and I was told by them that "this is your band" "this is what you worked for" "you can't let Chris (McMahon) down" "we can do this show and have fun" "we can't let anyone down" "it's all your imagination" "there are no problems." I was instructed by them to "relax" and "meet them at the club" "Not to worry, the truck is already loaded and ready to go."

70. When they presented to the court that I called the venue to cancel the show, that is a lie. I said to them that I thought about it, but they lied to me, they claim that they had an agreement to uphold, that is a pompous statement as, Chris McMahon, had no involvement with the plaintiffs as far as booking the show. They only wanted to maintain a relationship with Mr. McMahon to have a place to play at after their agenda was complete by forcing me out of "Pink Voyd".

71. The show went on as scheduled, as far as the plaintiffs calling it disastrous, the band grossed \$1,600.00 for the night, as shown in my evidence. Not one person, including the venue, asked for a refund or walked out.

72. On June 2, 2001, The Plaintiffs cornered me in the back of The ACAL copiers truck (often used to transport band equipment). I was accused of stealing funds from the performance in an attempt to lure me into a physical confrontation. This was witnessed by Eamon, Eric and John Shipp (our sound man). Tony instructed everyone

to go home, he demanded that Eric and I meet him at the ACAL building. Remarks were made to me that "the equipment better get there safely" and that "nothing better be lost" "my equipment is valuable" etc. When we arrived, he demanded that Eric and myself unload the truck alone and explained this was for punishment for arriving at Goodtimes late (after being told that very morning to meet them at the club).

73. Due to sleep apnea, while driving back to the A-Cal copiers building, from Good Times, I passed out behind the wheel while pulling out onto the road en route to Billerica. Eric then took charge of my vehicle and drove there and drove me home.

74. June 4 or 5, 2001, Tony called me to remove my equipment. I arrived with Eric, we were met by Tony and John, we had an exchange of words. We were told the band broke up, there was no more band and no one wished to continue or had any interest in pursuing with a Pink Floyd tribute band. The story that the plaintiffs tell that everyone quit the band is a lie. They claim they quit the band one by one and left me, the band was based out of the ACAL Copiers building this is not possible, the plaintiffs claim that they quit my band, they say everyone left. That would have to mean that I stayed in the band alone, that was located in the ACAL Building.

75. On more than one occasion my wife Deborah had communication with the plaintiffs as to their motives and reasons for ousting me from "Pink Voyd", more than once Tony stated to her that I was "too fat" "slow" "sloppy" etc. He also went as far as if to say that I "did not deserve her" and that she was a "Saint" for "putting up with me." "How could she be married to someone like me" etc. It was also brought to my attention that emails were circulated to Other members of my family as well about me, with slanderous remarks. I was unaware of this as I was battling with my condition